

**FEDERAL LAND EXCHANGE AND SALE AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael E. Noel**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill deals with the exchange of federal land for state land.

**Highlighted Provisions:**

This bill:

- ▶ amends the state land use planning and management program;
- ▶ requires the School and Institutional Trust Lands Administration to, by certain

dates:

- evaluate state land;
- identify parcels of state and federal land that are suitable for a federal land exchange; and
- make reports to the secretary of the United States Department of Agriculture, Legislative Management Committee, and Natural Resources, Agriculture, and Environment Interim Committee; and

- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



28 **63J-8-104**, as last amended by Laws of Utah 2012, Chapter 369

29 **63L-2-201**, as last amended by Laws of Utah 2011, Chapter 247

30 ENACTS:

31 **63L-2-202**, Utah Code Annotated 1953

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33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **63J-8-104** is amended to read:

35 **63J-8-104. State land use planning and management program.**

36 (1) The BLM and Forest Service land use plans should produce planning documents  
37 consistent with state and local land use plans to the maximum extent consistent with federal  
38 law and FLPMA's purposes, by incorporating the state's land use planning and management  
39 program for the subject lands that is as follows:

40 (a) preserve traditional multiple use and sustained yield management on the subject  
41 lands to:

42 (i) achieve and maintain in perpetuity a high-level annual or regular periodic output of  
43 agricultural, mineral, and various other resources from the subject lands;

44 (ii) support valid existing transportation, mineral, and grazing privileges in the subject  
45 lands at the highest reasonably sustainable levels;

46 (iii) produce and maintain the desired vegetation for watersheds, timber, food, fiber,  
47 livestock forage, wildlife forage, and minerals that are necessary to meet present needs and  
48 future economic growth and community expansion in each county where the subject lands are  
49 situated without permanent impairment of the productivity of the land;

50 (iv) meet the recreational needs and the personal and business-related transportation  
51 needs of the citizens of each county where the subject lands are situated by providing access  
52 throughout each such county;

53 (v) meet the needs of wildlife, provided that the respective forage needs of wildlife and  
54 livestock are balanced according to the provisions of Subsection **63J-4-401(6)(m)**;

55 (vi) protect against adverse effects to historic properties, as defined by 36 C.F.R. Sec.  
56 800;

57 (vii) meet the needs of community economic growth and development;

58 (viii) provide for the protection of existing water rights and the reasonable

59 development of additional water rights; and

60 (ix) provide for reasonable and responsible development of electrical transmission and  
61 energy pipeline infrastructure on the subject lands;

62 (b) (i) do not designate, establish, manage, or treat any of the subject lands as an area  
63 with management prescriptions that parallel, duplicate, or resemble the management  
64 prescriptions established for wilderness areas or wilderness study areas, including the  
65 nonimpairment standard applicable to WSAs or anything that parallels, duplicates, or  
66 resembles that nonimpairment standard; and

67 (ii) recognize, follow, and apply the agreement between the state and the Department  
68 of the Interior in the settlement agreement;

69 (c) call upon the BLM to revoke and revise BLM Manuals H 6301, H 6302, and H  
70 6303, issued on or about February 25, 2011, in light of the settlement agreement and the  
71 following principles of this state plan:

72 (i) BLM lacks congressional authority to manage subject lands, other than WSAs, as if  
73 they are or may become wilderness;

74 (ii) BLM lacks authority to designate geographic areas as lands with wilderness  
75 characteristics or designate management prescriptions for such areas other than to use specific  
76 geographic-based tools and prescriptions expressly identified in FLPMA;

77 (iii) BLM lacks authority to manage the subject lands in any manner other than to  
78 prevent unnecessary or undue degradation, unless the BLM uses geographic tools expressly  
79 identified in FLPMA and does so pursuant to a duly adopted provision of a resource  
80 management plan adopted under FLPMA, 43 U.S.C. Sec. 1712;

81 (iv) BLM inventories for the presence of wilderness characteristics must be closely  
82 coordinated with inventories for those characteristics conducted by state and local  
83 governments, and should reflect a consensus among those governmental agencies about the  
84 existence of wilderness characteristics, as follows:

85 (A) any inventory of wilderness characteristics should reflect all of the criteria  
86 identified in the Wilderness Act of 1964, including:

87 (I) a size of 5,000 acres or more, containing no visible roads; and

88 (II) the presence of naturalness, the opportunity for primitive and unconfined  
89 recreation, and the opportunity for solitude;

90 (B) geographic areas found to contain the presence of naturalness must appear pristine  
91 to the average viewer, and not contain any of the implements, artifacts, or effects of human  
92 presence, including:

93 (I) visible roads, whether maintained or not; and

94 (II) human-made features such as vehicle bridges, fire breaks, fisheries, enhancement  
95 facilities, fire rings, historic mining and other properties, including tailings piles, commercial  
96 radio and communication repeater sites, fencing, spring developments, linear disturbances,  
97 stock ponds, visible drill pads, pipeline and transmission line rights-of-way, and other similar  
98 features;

99 (C) factors, such as the following, though not necessarily conclusive, should weigh  
100 against a determination that a land area has the presence of naturalness:

101 (I) the area is or once was the subject of mining and drilling activities;

102 (II) mineral and hard rock mining leases exist in the area; and

103 (III) the area is in a grazing district with active grazing allotments and visible range  
104 improvements;

105 (D) geographic areas found to contain the presence of solitude should convey the sense  
106 of solitude within the entire geographic area identified, otherwise boundary adjustments should  
107 be performed in accordance with Subsection (1)(c)(iv)(F);

108 (E) geographic areas found to contain the presence of an opportunity for primitive and  
109 unconfined recreation must find these features within the entire area and provide analysis about  
110 the effect of the number of visitors to the geographic area upon the presence of primitive or  
111 unconfined recreation, otherwise boundary adjustments should be performed in accordance  
112 with Subsection (1)(c)(iv)(F);

113 (F) in addition to the actions required by the review for roads pursuant to the  
114 definitions of roads contained in BLM Manual H 6301, or any similar authority, the BLM  
115 should, pursuant to its authority to inventory, identify and list all roads or routes identified as  
116 part of a local or state governmental transportation system, and consider those routes or roads  
117 as qualifying as roads within the definition of the Wilderness Act of 1964; and

118 (G) BLM should adjust the boundaries for a geographic area to exclude areas that do  
119 not meet the criteria of lacking roads, lacking solitude, and lacking primitive and unconfined  
120 recreation and the boundaries should be redrawn to reflect an area that clearly meets the criteria

121 above, and which does not employ minor adjustments to simply exclude small areas with  
122 human intrusions, specifically:

123 (I) the boundaries of a proposed geographic area containing lands with wilderness  
124 characteristics should not be drawn around roads, rights-of-way, and intrusions; and

125 (II) lands located between individual human impacts that do not meet the requirements  
126 for lands with wilderness characteristics should be excluded;

127 (v) BLM should consider the responses of the Department of the Interior under cover  
128 of the letter dated May 20, 2009, clearly stating that BLM does not have the authority to apply  
129 the nonimpairment management standard to the subject lands, or to manage the subject lands in  
130 any manner to preserve their suitability for designation as wilderness, when considering the  
131 proper management principles for areas that meet the full definition of lands with wilderness  
132 characteristics; and

133 (vi) even if the BLM were to properly inventory an area for the presence of wilderness  
134 characteristics, the BLM still lacks authority to make or alter project level decisions to  
135 automatically avoid impairment of any wilderness characteristics without express  
136 congressional authority to do so;

137 (d) achieve and maintain at the highest reasonably sustainable levels a continuing yield  
138 of energy, hard rock, and nuclear resources in those subject lands with economically  
139 recoverable amounts of such resources as follows:

140 (i) the development of the solid, fluid, and gaseous mineral resources in portions of the  
141 subject lands is an important part of the state's economy and the economies of the respective  
142 counties, and should be recognized that it is technically feasible to access mineral and energy  
143 resources in portions of the subject lands while preserving or, as necessary, restoring  
144 nonmineral and nonenergy resources;

145 (ii) all available, recoverable solid, fluid, gaseous, and nuclear mineral resources in the  
146 subject lands should be seriously considered for contribution or potential contribution to the  
147 state's economy and the economies of the respective counties;

148 (iii) those portions of the subject lands shown to have reasonable mineral, energy, and  
149 nuclear potential should be open to leasing, drilling, and other access with reasonable  
150 stipulations and conditions, including mitigation, reclamation, and bonding measures where  
151 necessary, that will protect the lands against unnecessary and undue damage to other significant

152 resource values;

153 (iv) federal oil and gas existing lease conditions and restrictions should not be  
154 modified, waived, or removed unless the lease conditions or restrictions are no longer  
155 necessary or effective;

156 (v) any prior existing lease restrictions in the subject lands that are no longer necessary  
157 or effective should be modified, waived, or removed;

158 (vi) restrictions against surface occupancy should be eliminated, modified, or waived,  
159 where reasonable;

160 (vii) in the case of surface occupancy restrictions that cannot be reasonably eliminated,  
161 modified, or waived, directional drilling should be considered where the mineral and energy  
162 resources beneath the area can be reached employing available directional drilling technology;

163 (viii) applications for permission to drill in the subject lands that meet standard  
164 qualifications, including reasonable and effective mitigation and reclamation requirements,  
165 should be expeditiously processed and granted; and

166 (ix) any moratorium that may exist against the issuance of qualified mining patents and  
167 oil and gas leases in the subject lands, and any barriers that may exist against developing  
168 unpatented mining claims and filing for new claims, should be carefully evaluated for removal;

169 (e) achieve and maintain livestock grazing in the subject lands at the highest reasonably  
170 sustainable levels by adhering to the policies, goals, and management practices set forth in  
171 Subsection 63J-4-401(6)(m);

172 (f) manage the watershed in the subject lands to achieve and maintain water resources  
173 at the highest reasonably sustainable levels as follows:

174 (i) adhere to the policies, goals, and management practices set forth in Subsection  
175 63J-4-401(6)(m);

176 (ii) deter unauthorized cross-country OHV use in the subject lands by establishing a  
177 reasonable system of roads and trails in the subject lands for the use of an OHV, as closing the  
178 subject lands to all OHV use will only spur increased and unauthorized use; and

179 (iii) keep open any road or trail in the subject lands that historically has been open to  
180 OHV use, as identified on respective county road maps;

181 (g) achieve and maintain traditional access to outdoor recreational opportunities  
182 available in the subject lands as follows:

183 (i) hunting, trapping, fishing, hiking, family and group parties, family and group  
184 campouts and campfires, rock hounding, OHV travel, geological exploring, pioneering,  
185 recreational vehicle parking, or just touring in personal vehicles are activities that are important  
186 to the traditions, customs, and character of the state and individual counties where the subject  
187 lands are located and should continue;

188 (ii) wildlife hunting, trapping, and fishing should continue at levels determined by the  
189 Wildlife Board and the Division of Wildlife Resources and traditional levels of group camping,  
190 group day use, and other traditional forms of outdoor recreation, both motorized and  
191 nonmotorized, should continue; and

192 (iii) the broad spectrum of outdoor recreational activities available on the subject lands  
193 should be available to citizens for whom a primitive, nonmotorized, outdoor experience is not  
194 preferred, affordable, or physically achievable;

195 (h) (i) keep open to motorized travel, any road in the subject lands that is part of the  
196 respective counties' duly adopted transportation plan;

197 (ii) provide that R.S. 2477 rights-of-way should be recognized by the BLM;

198 (iii) provide that a county road may be temporarily closed or permanently abandoned  
199 only by statutorily authorized action of the county or state;

200 (iv) provide that the BLM and the Forest Service must recognize and not unduly  
201 interfere with a county's ability to maintain and repair roads and, where reasonably necessary,  
202 make improvements to the roads; and

203 (v) recognize that additional roads and trails may be needed in the subject lands from  
204 time to time to facilitate reasonable access to a broad range of resources and opportunities  
205 throughout the subject lands, including livestock operations and improvements, solid, fluid,  
206 and gaseous mineral operations, recreational opportunities and operations, search and rescue  
207 needs, other public safety needs, access to public lands for people with disabilities and the  
208 elderly, and access to Utah school and institutional trust lands for the accomplishment of the  
209 purposes of those lands;

210 (i) manage the subject lands so as to protect prehistoric rock art, three dimensional  
211 structures, and other artifacts and sites recognized as culturally important and significant by the  
212 state historic preservation officer or each respective county by imposing reasonable and  
213 effective stipulations and conditions reached by agreement between the federal agency and the

214 state authorized officer pursuant to the authority granted by the National Historic Preservation  
215 Act, 16 U.S.C. Sec. 470 et seq.;

216 (j) manage the subject lands so as to not interfere with the property rights of private  
217 landowners as follows:

218 (i) the state recognizes that there are parcels of private fee land throughout the subject  
219 lands;

220 (ii) land management policies and standards in the subject lands should not interfere  
221 with the property rights of any private landowner to enjoy and engage in uses and activities on  
222 an individual's private property consistent with controlling county zoning and land use laws;  
223 and

224 (iii) a private landowner or a guest or client of a private landowner should not be  
225 denied the right of motorized access to the private landowner's property consistent with past  
226 uses of the private property;

227 (k) manage the subject lands in a manner that supports the fiduciary agreement made  
228 between the state and the federal government concerning the school and institutional trust  
229 lands, as managed according to state law, by:

230 (i) formally recognizing, by duly authorized federal proclamation, the duty of the  
231 federal government to support the purposes of the school and institutional trust lands owned by  
232 the state and administered by SITLA in trust for the benefit of public schools and other  
233 institutions as mandated in the Utah Constitution and the Utah Enabling Act of 1894, 28 Stat.  
234 107;

235 (ii) actively seeking to support SITLA's fiduciary responsibility to manage the school  
236 trust lands to optimize revenue by making the school trust lands available for sale and private  
237 development and for other multiple and consumptive use activities such as mineral  
238 development, grazing, recreation, timber, and agriculture;

239 (iii) not interfering with SITLA's ability to carry out its fiduciary responsibilities by the  
240 creation of geographical areas burdened with management restrictions that prohibit or  
241 discourage the optimization of revenue, without just compensation;

242 (iv) recognizing SITLA's right of economic access to the school trust lands to enable  
243 SITLA to put those sections to use in its fiduciary responsibilities; [~~and~~]

244 (v) recognizing any management plan enacted by SITLA pursuant to Section



245 [53C-2-201](#); and

246 (vi) acting responsibly as the owner of land parcels with potential for exchange for  
247 state land parcels by:

248 (A) moving forward with the process for identifying federal land parcels suitable and  
249 desirable for exchange for state land parcels;

250 (B) removing barriers to the exchange of federal land parcels for state land parcels;

251 (C) expediting the procedures and processes necessary to execute the exchange of  
252 federal land parcels for state land parcels; and

253 (D) lobbying and supporting in good faith any congressional legislation to enact and  
254 finalize the exchange of federal land parcels for state land parcels;

255 (l) oppose the designation of BLM lands as areas of critical environmental concern  
256 (ACEC), as the BLM lands are generally not compatible with the state's plan and policy for  
257 managing the subject lands, but special cases may exist where such a designation is appropriate  
258 if compliance with FLPMA, 43 U.S.C. Sec. 1702(a) is clearly demonstrated and where the  
259 proposed designation and protection:

260 (i) is limited to the geographic size to the minimum necessary to meet the standards  
261 required by Section [63J-4-401](#);

262 (ii) is necessary to protect not just a temporary change in ground conditions or visual  
263 resources that can be reclaimed or reversed naturally, but is clearly shown as necessary to  
264 protect against visible damage on the ground that will persist on a time scale beyond that which  
265 would effectively disqualify the land for a later inventory of wilderness characteristics;

266 (iii) will not be applied in a geographic area already protected by other protective  
267 designations available pursuant to law; and

268 (iv) is not a substitute for the nonimpairment management requirements of wilderness  
269 study areas; and

270 (m) recognize that a BLM visual resource management class I or II rating is generally  
271 not compatible with the state's plan and policy for managing the subject lands, but special cases  
272 may exist where such a rating is appropriate if jointly considered and created by state, local,  
273 and federal authorities as part of an economic development plan for a region of the state, with  
274 due regard for school trust lands and private lands within the area.

275 (2) All BLM and Forest Service decision documents should be accompanied with an

276 analysis of the social and economic impact of the decision. Such analysis should:

277 (a) consider all facets of the decision in light of valuation techniques for the potential  
278 costs and benefits of the decision;

279 (b) clarify whether the costs and benefits employ monetized or nonmonetized  
280 techniques;

281 (c) compare the accuracy, completeness, and viability of monetized and nonmonetized  
282 valuation techniques used as part of the analysis, including all caveats on use of the techniques;  
283 and

284 (d) compare the valuation techniques employed in the analysis to the federal standards  
285 for valuation employed by the U.S. Department of Justice in court actions.

286 Section 2. Section **63L-2-201** is amended to read:

287 **63L-2-201. Federal government acquisition of real property in the state.**

288 (1) As used in this [section] chapter:

289 (a) "Agency" is defined in Section [63G-10-102](#).

290 (b) "Agency" includes:

291 (i) the School and Institutional Trust Lands Administration created in Section  
292 [53C-1-201](#); and

293 (ii) the School and Institutional Trust Lands Board of Trustees created in Section  
294 [53C-1-202](#).

295 (2) (a) Before legally binding the state by executing an agreement to sell or transfer to  
296 the United States government 10,000 or more acres of any state lands or school and  
297 institutional trust lands, an agency shall submit the agreement or proposal:

298 (i) to the Legislature for its approval or rejection; or

299 (ii) in the interim, to the Legislative Management Committee for review of the  
300 agreement or proposal.

301 (b) The Legislative Management Committee may:

302 (i) recommend that the agency execute the agreement or proposal;

303 (ii) recommend that the agency reject the agreement or proposal; or

304 (iii) recommend to the governor that the governor call a special session of the  
305 Legislature to review and approve or reject the agreement or proposal.

306 (3) Before legally binding the state by executing an agreement to sell or transfer to the

307 United States government less than 10,000 acres of any state lands or school and institutional  
308 trust lands, an agency shall notify the Natural Resources, Agriculture, and Environment Interim  
309 Committee.

310 (4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances  
311 of school trust lands to the United States government made for the purpose of completing the  
312 Red Cliffs Desert Reserve in Washington County.

313 Section 3. Section **63L-2-202** is enacted to read:

314 **63L-2-202. Identification and appraisal of state land.**

315 (1) The agency shall:

316 (a) by January 1, 2016:

317 (i) evaluate state land, including:

318 (A) investigating mineral examinations;

319 (B) conducting title searches;

320 (C) conducting archeological surveys;

321 (D) removing encumbrances, if possible; and

322 (E) curing any deficiencies that may prevent highest and best use;

323 (ii) establish standards to determine whether a parcel of state land evaluated under  
324 Subsection (1)(a)(i) is suitable for a potential federal land exchange;

325 (iii) subject to Subsection (2), appraise a parcel of state land that meets the standards  
326 established under Subsection (1)(a)(ii) according to nationally recognized appraisal standards,  
327 including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land  
328 Acquisitions described in the Federal Lands Policy and Management Act of 1976;

329 (iv) identify federal land that is suitable and desirable for federal land exchange; and

330 (v) communicate the findings of Subsections (1)(a)(i) through (iv) to the secretary of  
331 the United States Department of Agriculture, the Legislative Management Committee, and the  
332 Natural Resources, Agriculture, and Environment Interim Committee; and

333 (b) by November 30, 2016, report to the Legislative Management Committee and the  
334 Natural Resources, Agriculture, and Environment Interim Committee on the status of federal  
335 land exchanges, including:

336 (i) any barriers that prevent the expeditious exchange of land as authorized by the  
337 Federal Land Management and Policy Act of 1976; and

338           (ii) the agency's plan to promote the exchange of federal lands.  
339           (2) When conducting the appraisal of a parcel of state land, as authorized in Subsection  
340 (1)(a)(iii), the agency shall take into account the recommended uses of federal land surrounding  
341 a parcel, as described in the current land use plan of the county in which the parcel is situated.

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**Legislative Review Note**  
**as of 3-5-14 10:22 AM**

**Office of Legislative Research and General Counsel**